Filed 8/19/19 In re S.J. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re S.J. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff, v. B.H., Defendant and Respondent; S.J., B.H., and S.H., Minors, Appellants.	B291577 (Los Angeles County Super. Ct. No. DK04976A-C)

APPEAL from order of the Superior Court of Los Angeles County, Veronica McBeth, Judge. Reversed and remanded with instructions.

Karen J. Dodd, under appointment by the Court of Appeal, for Appellants.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Respondent.

INTRODUCTION

Appellant minors—S.J., B.H., and S.H.—appeal the juvenile court's order granting their father's third Welfare and Institutions Code section 388[1] petition to reinstate family reunification services for "six more months." Respondent Brandon H. (Father) filed his third petition on the same date as the section 366.26 hearing on the selection and implementation of a permanent plan for all three children.[2]

Appellant minors argue the juvenile court abused its discretion in granting Father's section 388 petition because: 1) Father's evidence was either previously submitted to the court and thus not "new" evidence; 2) Father's evidence failed to show he had adequately addressed the issues which had caused his children to become dependents of the court; and 3) reinstatement of reunification services was not in the best interests of the children, because they had been residing in the home of prospective adoptive parents for nearly a year and further services would delay implementation of a permanent and stable plan.

We agree with Appellant minors, and reverse the court's order granting Father's third section 388 petition.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Mother is not a party to the appeal. On January 9, 2019, the Los Angeles Department of Children and Family Services (DCFS) notified the court that it would not be filing a respondent's brief as it is "not the proper respondent in this dependency appeal" and "father is the appropriate respondent to address the children's contentions."

FACTUAL AND PROCEDURAL BACKGROUND

A. *First Dependency Petition — for S.J.*

In February 2014, S.J. was brought to the attention of the DCFS when a caller reported that Mother, then age 21, was arrested for "attempting to prostitute" and had left S.J. "with people . . . who contacted the maternal grandmother . . . because they don't want the baby."

DCFS learned S.J. was born prematurely in October 2013, underwent multiple surgeries within the first few months of his life, and was prescribed a specific formula as a result of his many health issues, which included cardiomyopathy, anemia, TPN-induced cholestasis, dumping syndrome, and "necrotizing enterocolitis (death of intestinal tissue)." Mother had missed important appointments with specialists to discuss S.J.'s health and development stages. When asked whether S.J. was immunized, Mother stated, "It's not that serious. He'll be alright. He's fine." When asked whether she was aware S.J. had a heart problem, Mother stated, "I didn't know that. The only thing that I remember them telling me was something about the electrolytes." Mother explained she "never learned to read" and thus, never read the medical documents given to her for S.J.

Upon learning the identity of S.J.'s father, a DCFS worker met with Father, then age 23, who reported Mother began to bring S.J. to his home every other weekend two months prior. They had broken up when Mother was six months pregnant with S.J. as a result of a domestic violence incident where they both "socked" one another. He admitted he was "not aware" of S.J.'s medical history. He also admitted to using marijuana, and when asked when he last used, Father began to laugh and stated, "About 4 hours ago."

On May 12, 2014, DCFS filed a petition alleging S.J., then seven months old, came within the jurisdiction of the juvenile court under section 300, subdivision (b). The petition alleged: 1) Mother endangered S.J.'s physical health and safety and placed S.J. at risk of harm because she "medically neglected" S.J., failed to "keep scheduled medical appointment following the child's gastrointestinal surgery," and "failed to have the child properly immunized" (count b-1); 2) Mother failed to set up "an appropriate plan" for S.J.'s ongoing care and supervision upon her incarceration, and "left the child in the care of an unrelated adult . . . who refused to provide the child with care and supervision," which endangered S.J.'s health and safety and put her at risk of harm (count b-2); and 3) Father endangered S.J.'s physical health and safety and placed S.J. at risk of physical harm and damage because he has a "history of illicit drug use" and is a "current abuser of marijuana which renders [him] incapable of providing [S.J.] with regular care and supervision" (count b-3).

At the detention hearing on May 12, 2014, the juvenile court ordered S.J. detained from the parents and released to the paternal great-grandmother. Mother and Father were permitted monitored visits two to three times per week.

During the June 2, 2014 jurisdictional and dispositional hearing, the court declared S.J. a dependent child of the court under section 300, subdivision (b), and sustained counts b-1 and b-3 of the petition. The court ordered S.J. removed from his parents and placed in the care of DCFS for suitable placement with a relative. Both parents were permitted monitored visits. Mother was ordered to participate in a parenting program, individual counseling to address case issues, and a literacy

program to learn to read. Father was ordered to participate in a parenting program and to submit to random or on-demand drug and alcohol testing. DCFS was ordered to provide reunification services to Mother and Father.

In anticipation of the six-month review hearing, DCFS submitted a status report and informed the court Father had not contacted DCFS and had not answered or returned calls made to him. Although Father was to submit to random as well as on-demand drug and alcohol testing, Father failed to show up to test at least six times during the month preceding the review hearing.

Father signed a waiver of reunification services that stated he does not wish to receive services of any kind, and that he knowingly and intelligently waived these services. At the six-month review hearing, the court terminated family reunification services for Father based on the signed waiver. The court found appropriate the planned permanent living arrangement with foster placement and ordered it as the permanent plan.

B. *Second Dependency Petition — for B.H.*

Ten months after the first petition was filed, DCFS filed a petition on March 6, 2015, alleging S.J.'s full sibling, B.H., then three weeks old, came within the jurisdiction of the juvenile court under section 300, subdivisions (a) and (b). DCFS alleged: 1) Father "engaged in a violent altercation" and struck Mother in October 2014 during her pregnancy with B.H., placing the child at risk of serious harm (counts a-1, b-3); 2) Mother's prior medical neglect of B.H.'s sibling S.J. placed B.H. at risk of harm, damage, and medical neglect (counts b-1, j-1); and 3) Father's "history of illicit drug abuse and failure to reunify with [B.H.'s] sibling" renders him "incapable of providing the child with regular care and supervision" (counts b-2, j-2).

At the March 6, 2015 detention hearing, the court ordered B.H. detained in shelter care and permitted monitored visitation for both parents three times a week; both parents were ordered "not to visit together."

Mother told the DCFS case worker that she was "willing to move out of father's home as they have a history of domestic violence and she prefers to put her children first instead of her 'baby daddy.' " Mother's CLETS results included convictions for disorderly conduct/prostitution in 2009, kidnapping in 2011, burglary and child cruelty in 2012, disorderly conduct / prostitution again in 2014, and driving with a suspended license in 2014. A CLETS request for Father came back as "too many to identify." Father made himself available for only one visitation with B.H. and "slept during the one hour visit while mother engaged with the child." On April 13, 2015, Father was arrested for a domestic violence incident and was released nine days later.

During the April 28, 2015 adjudication hearing, the court declared B.H. a dependent child, sustained counts b-2 and b-3 amended by interlineation, and ordered B.H. removed from the custody of both parents. Mother and Father were allowed monitored visits. Father was ordered to participate in individual counseling to address case issues, a parenting program, and a 52-week domestic violence program.

On June 15, 2015, Mother was arrested on outstanding warrants in connection with her 2012 convictions and was sentenced to prison. Soon after, B.H. was hospitalized for pneumonia and a collapsed lung.

On July 14, 2015, the court held the three-month progress hearing as to B.H. and the section 366.21(f) permanency hearing as to S.J. The court terminated Mother's family reunification

services for S.J. and ordered foster placement as the permanent plan. It scheduled a section 366.26 hearing to select and implement a permanent placement plan for S.J., which the court found "necessary and appropriate."

On October 21, 2015, Father contacted DCFS to inquire what he needed to do to get B.H. returned to him. Father stated that he visited the child every week. He informed DCFS he had enrolled in a domestic violence program and anger management program. However, Father failed to submit to drug and alcohol testing. Father's progress letter indicated he missed four sessions of the program, but that he was "cooperative and is benefitting from group therapy."

At the six-month review hearing for B.H., the court found Father was in compliance with the case plan, ordered him to drug test "one more time," and ordered DCFS to provide him with reunification services as to B.H.

C. *Father's First Section 388 Petition*

On January 12, 2016, now 18 months after S.J. was removed from his custody, Father filed a section 388 petition requesting the court, notwithstanding the prior waiver, to change its prior order terminating reunification services as to S.J. Father requested that S.J. be ordered "[h]ome of parent father" or, in the alternative, to reinstate reunification services and unmonitored visitation. In support of his request, Father attached certificates of completion of the parenting class and training; a letter from the counseling center confirming Father attended 6 sessions of individual psychotherapy; and a progress report from the domestic violence batterers' program indicating that out of the 52 court-ordered sessions, Father attended 18 and missed 4 sessions.

On February 29, 2016, the court held the section 366.26 hearing as to S.J. and B.H. and the hearing on Father's section 388 petition as to S.J. DCFS informed the court Father had submitted to an on-demand test yielding negative results for any substance. DCFS also informed the court it had liberalized Father's visitation, which was now unmonitored. The court granted Father's section 388 petition in part and reinstated reunification services for Father, as the "best interest of the child(ren) would be promoted by the proposed change of order." Father was permitted unmonitored visitation with S.J., but had to comply with random or on-demand drug and alcohol testing, and complete a 52-week domestic violence program. The court took the section 366.26 hearing off calendar as to both children and set an 18-month review hearing.

Mother was released from prison and appeared to have "rejoined with" Father. Soon thereafter, on May 4, 2016, Mother and Father were involved in another domestic violence incident where Mother stabbed Father multiple times with a kitchen knife after arguing "over a cell phone." Mother admitted to stabbing him, but claimed it was self-defense. DCFS requested that Father obtain a restraining order against Mother as she was sentenced to only 10 days in jail, but Father refused to do so unless "instructed by the Court."

A few weeks later, on May 22, 2016, Father was arrested for inflicting corporal injury on Mother; DCFS was concerned about the minors' safety during unmonitored visits. The next day, DCFS filed an ex parte application bringing the domestic violence incidents to the court's attention; Father's unmonitored visitation reverted to monitored visitation.

In June 2016, Father obtained a temporary restraining order against Mother, which expired one week later. Thereafter, Father did not obtain further restraining orders against Mother.

The 12-month review hearing as to B.H. was held the following week. The court ordered DCFS to continue providing reunification services. DCFS reported Father was dismissed from the domestic violence batterers' program in August 2016 because of "poor attendance." On September 3, 2016, Father was released from jail on probation, which required him to seek employment, stay away from Mother, and participate in 52 weeks of domestic violence counseling. Father stated he and Mother "were no longer going to be in a relationship"; however, DCFS was made aware that Mother was currently pregnant with their third child.

On October 12, 2016, at the 18-month review hearing for both S.J. and B.H., the court terminated reunification services for both parents, ordered DCFS to place the children together, and scheduled a section 366.26 hearing to select and implement a permanent placement plan for both minors.

D. *Third Dependency Petition — for S.H.*

During a monitored visit on November 30, 2016, the DCFS worker asked Mother, who no longer appeared pregnant, "the whereabouts of the newborn child." Mother stated the child died and she began to cry. DCFS discovered Mother lied, as she had given birth to S.H. earlier that month.

On December 12, 2016, DCFS filed a petition alleging one-month-old S.H. came within the jurisdiction of the juvenile court under section 300, subdivisions (a), (b)(1) and (j). DCFS alleged the parents' "history of engaging in violent altercations" and recent domestic violence incidents endanger the child's health

and safety and places the child at risk of serious harm (counts a-1, b-1, j-1). DCFS also alleged Father's "history of substance abuse" and "criminal history of a conviction of DUI," coupled with the fact that S.H.'s siblings were receiving permanent placement services, "interferes with providing regular care and supervision" and places the child at risk of serious harm or danger (counts b-2, j-2).

At the detention hearing, the court detained S.H. from her parents and ordered DCFS to reach out to the caretaker of S.H.'s siblings for possible placement there. Mother was permitted monitored visitation three times a week; Father was allowed no visitation.

Although Father had formerly reported to DCFS that he and Mother have broken up, he called the case worker on December 20, 2016, and ask if his children were going to be returned to him. He told the worker that if the children were not returned, " 'it ain[']t no problem for me to go find another chick and make more babies.' " By March 2017, both parents confirmed they were no longer together.

DCFS informed the court Mother was arrested on March 14, 2017, her "4th arrest in less than one year."

On April 12, 2017, at the jurisdictional hearing on S.H.'s case, the court sustained all counts and declared S.H. a dependent under section 300, subdivisions (a), (b), and (j). The court declined to order further reunification services and set a hearing to select a permanent plan. Father was permitted to resume visitation "once he provided 4 consecutive clean tests"; however, he stopped testing once visitation was reinstated. The court ordered Father to "continue to [test] clean to maintain his previously ordered visitation." Mother's visitation was reduced to

once a month "due to threats of harm" made by her against Father.

On July 21, 2017, all three minors were placed in the home of maternal grandfather and his wife, both of whom were "committed to maintaining the family connection as well as protect the minors from their parents." By October 2017, the caregivers indicated they wished "to go forward with adopting all three children."

It had now been a little over three years since the initial petition was filed as to S.J. In the three years, both parents had been arrested and convicted of criminal offenses; both parents had served time in jail or prison, or been placed on probation; both parents had failed to complete their reunification services plans; and both parents had been involved in several domestic violence incidents with each other.

E. *Father's Second Section 388 Petition*

On October 24, 2017, Father filed his second section 388 petition, requesting the court modify its previous orders and order all three children returned to him or, alternatively, to reinstate reunification services for all three children with unmonitored visitation. Mother similarly filed a section 388 petition.

In support of his petition, Father included six exhibits—five of which were the exact same documents or evidence previously provided in support of Father's first section 388 petition filed 21 months before. The only new evidence was a letter from the Recreation and Community Services Department of the Montebello Unified School District, stating Father had completed 29 sessions of its parent education and domestic violence prevention program (Montebello DV Program).

At the hearing on December 5, 2017, Father argued a "significant change has occurred since the . . . termination of his reunification services" and that the "domestic violence [incidents] . . . all occurred prior to the court terminating . . . reunification services." DCFS disagreed and argued it is "inaccurate to state that there have been no domestic violence incidences since reunification was terminated because there was an ongoing incident and recent incident just within the last six months." DCFS also argued Father's participation in the Montebello DV Program appeared to be based on the requirements of his grant of probation in one of his criminal cases.

The court found Father violated the terms of his formal probation as "he was ordered to stay away from Mother" yet he continued to reside with her when there appeared to be "continued hostility" between them. The court found these "parties have not learned from the programs they've been involved in" and denied both parents' section 388 petitions.

F. *Father's Third and Current Section 388 Petition*

On January 30, 2018, eight weeks after the denial of his second 388 petition, Father filed his third section 388 petition, requesting the juvenile court return all three children to him or reinstate reunification services with overnight unmonitored visitation. In his petition, Father stated the requested order is in the minors' best interests because the "children identify [him] as their father, as he has maintained his visitation with the children on the weekends at the paternal grandmother's home." The petition included the same attachments Father previously submitted as part of his first and second petitions; the only new document submitted to the court was a letter from the Montebello

DV Program dated January 18, 2018, indicating Father had completed 37 sessions of the program.

In its response to Father's third section 388 petition, DCFS reported Father did not visit the children in January and had missed two random drug tests since the last hearing. When Father began visiting his children again, Father "never asked . . . about the children's medical needs" and kept "having to be told by his grandmother to do things for the children when it comes to meeting their basic needs such as feeding, showing affection[,] and diaper change." DCFS informed the court the minors were doing well in the home of maternal grandfather and "exhibit a strong bond with the caregivers," who are "still committed to providing permanency to the minors through adoption." In fact, DCFS had completed the adoption assessment and home study; "adoption [was deemed] the most appropriate plan for the children" as the caregivers continued to cooperate and "appear[ed] to love the children very much."

In May 2018, Father provided DCFS with a certificate of completion of 52 sessions of the domestic violence prevention program.

On June 13, 2018, at the combined hearing on Father's section 388 petition and the permanency plan, Father argued the evidence he submitted to the court "show[ed] that he . . . made a significant change of circumstances." Minors' counsel disagreed and stated "the standard is that there is a change of circumstances, not that he's changing"; minors' counsel argued that although Father is "in the process of changing by completing . . . these services and . . . classes, . . . he hasn't really changed because there are still some very outstanding issues [that] really go directly to his ability to care for these children."

DCFS similarly argued that although Father completed some parenting classes, "[t]here is no change that shows . . . that he's able to meet the needs of his children." Father's submission of "stale, old information" previously presented to the court and his failure to submit any evidence that showed he had complied with the drug and alcohol testing requirement of the case plan demonstrates that he "hasn't really climbed over those hurdles that initially brought the case here." Lastly, DCFS argued it was not in the best interest of the children to "at this point, . . . uproot the four years of the stability that these children have had out of the Father's home," especially as they had been happily placed in the home of maternal grandfather since July 2017.

The court granted Father's third section 388 petition, although it "wish[ed] [Father] had done more sooner." The court stated although it "kn[e]w . . . Father doesn't know specifically what medications the kids are taking," "has no transportation," "struggles to discipline the children," and must be told by paternal relatives "what he has to do and what needs to happen," the court still founds Father made a "significant change." The court also stated that "[e]ven though [the children] are well taken care of by the maternal family," it is in the children's best interest for Father to have six more months of reunification services and to participate in parent-child interaction therapy (PCIT). Father was ordered to drug test weekly. The court explained further explained: "Father was young when this started. He's still young. I am going to give him a chance to learn a little more over the next six months . . . ."

The children timely appealed the order granting Father's section 388 petition.

DISCUSSION

A. *Standard of Review*

We review an order granting or denying a section 388 petition for abuse of discretion. (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478 (*Alayah J.*); *In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*).) "Whether a previously made order should be modified rests within the dependency court's discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established." (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) The appropriate test is whether the trial court has "exceeded the bounds of reason" in granting (or denying) a section 388 petition, and a reviewing court may not disturb that decision unless it made "an arbitrary, capricious or patently absurd determination." (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.)

B. *Applicable Law*

Under section 388, a parent "may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made." (§ 388, subd. (a)(1).) "Section 388 provides an ' "escape mechanism" ' for parents facing termination of their parental rights by allowing the juvenile court to consider a legitimate change in the parent's circumstances after reunification services have been terminated." (*Alayah J.*, *supra*, 9 Cal.App.5th at p. 478.)

"A parent's interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights." (*In re Marilyn H.* (1993)

5 Cal.4th 295, 306 (*Marilyn H.*).) Likewise, the welfare of a child "is a compelling state interest that a state has not only a right, but a duty, to protect." (*Id.* at p. 307.) In most cases, when a child has been removed due to abuse or neglect, the state should provide the parent with services to assist him or her in overcoming the problems that led to removal. (*Id.* at p. 308.) However, once a court has terminated reunification services for a parent whose child has been removed from his or her care, the court must shift its focus to "the needs of the child for permanency and stability." (*Id.* at p. 309.) From that point on, there is a "rebuttable presumption that continued foster care is in the best interests of the child." (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

Thus, "after reunification services have terminated, a parent's [section 388] petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child's need for permanency and stability." (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) Section 388 "provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status." (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309.)

To obtain the requested modification under section 388, a parent must demonstrate by a preponderance of the evidence, not only that (1) there is a change in circumstances or new evidence warranting a modification of the court's prior order, but also that, (2) the proposed modification is in the best interests of the child or that the child's welfare requires the modification sought. (§ 388(a); see Cal. Rules of Court, rule 5.570(e), (h)(1)(D) & (i)(1);

In re Jasmon O. (1994) 8 Cal.4th 398, 415 (*Jasmon O.*); *Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

The petitioning parent must show "*changed*, not changing, circumstances." (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; accord, *In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*).) The changed circumstances requirement of section 388 "must be viewed in the context of the dependency proceedings as a whole." (*Marilyn H.*, *supra*, 5 Cal.4th at p. 307.) "[I]n order to prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate." (*Id.* at p. 308.) "The fact that the parent 'makes relatively last-minute (albeit genuine) changes' does not automatically tip the scale in the parent's favor." (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.) Further, "the change of circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.)

However, "[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529 (*Kimberly F.*).) "The factors to be considered in evaluating the child's best interests under section 388 are: (1) the seriousness of the problem that led to the dependency and the reason for any continuation of that problem; (2) the strength of the child's bond with his or her new caretakers compared with the strength of the child's bond with the parent; and (3) the degree to which the problem leading to the dependency may be easily removed or ameliorated, and the

degree to which it actually has been." (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 224 (*Ernesto R.*).)

In determining a child's best interest, a "primary consideration" is "the goal of assuring stability and continuity." (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) " 'When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement would be in the best interests of that child.' " (*Ibid.*) The court must consider "the strength of the existing bond between the parent and child" as well as "the strength of a child's bond to his or her present caretakers, and the length of time a child has been in the dependency system in relationship to the parental bond." (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531.)

C. *Application and Analysis*

Appellant minors argue the juvenile court abused its discretion in granting Father's third section 388 petition because Father did not provide new evidence or demonstrate changed circumstances warranting reinstatement of reunification services for Father. Appellant minors further argue reinstatement of family reunification services for Father was not in their best interests.

We agree. The only "new evidence" Father submitted to the court was his certificate of completion of 52 sessions of the Montebello DV Program. However, Father was first ordered to participate in 52 sessions of a domestic violence program on April 28, 2015, and he failed to comply with the court's orders for *years*. We commend him for his renewed motivation in completing the 52 sessions of the Montebello DV Program in May 2018. However, a petition which alleges merely changing circumstances

and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. Childhood does not wait for the parent to become adequate. (*Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) Father's completion of the Montebello DV Program, though commendable, does not satisfy the requirement that the change in circumstances "be substantial." (*Ernesto R.*, *supra,* 230 Cal.App.4th at p. 222.)

We are also mindful that Father's participation in the Montebello DV Program "appear[ed] to be based on the requirements of his probation" in his criminal case, in that the certificate specifically refers to Father's criminal case number.

We believe Father did not establish the relevant "changed circumstances," that is, whether Father had made substantial progress in his ability to meet the children's basic and medical needs and to provide care. Father continued to struggle with understanding and meeting the children's basic needs, let alone their special medical needs due to the various diagnoses they suffered from. The DCFS social worker assessed Father did not demonstrate the ability to care for the minor children outside a monitored setting and without the presence of paternal relatives, and we agree. Father did not demonstrate substantial progress or improvement in his ability to care for the minor children. Based on the foregoing, we cannot conclude Father demonstrated changed circumstances or new evidence warranting a modification of the former order. (Cal. Rules of Court, rule 5.570(d)(1).)

Even if there were changed circumstances, Father does not explain why the change he requested would be in the children's

best interest. In his section 388 petition, Father merely set forth a conclusory statement that his requested order is in the best interest of the children because the "children identify [him] as their father, as he has maintained his visitation with the children on the weekends." Father did not allege specific facts in his appellate briefing to show how the children's interests would be promoted by granting his request. Based on Father's dismal four-year track record, there is no reason to delay the children's chance at stability, continuity, and safety any longer.

As our Supreme Court observed, "after a child has spent a substantial period in foster care and attempts at reunification have proved fruitless, the child's interest in stability outweighs the parent's interest in asserting the right to the custody and companionship of the child." (*Jasmon O.*, *supra*, 8 Cal.4th at pp. 419–420.) It has been five years since the first petition was filed and S.J., the oldest sibling, was removed from parental care. The children have spent the majority of their lives removed from Father's custody, subject to Father's irregular visitation and all too frequent bouts of parental domestic violence. They have been placed successfully for a year in the home of their maternal grandfather and his wife, who are also prospective adoptive parents. At this point, the children's need for permanency, stability, and continuity take precedence over Father's interest in reunification. (See *Marilyn H.*, *supra*, 5 Cal.4th at pp. 309–310.)

Because Father had not shown substantial progress in his ability to care for the children or that an additional six months of reunification services would serve the children's best interests, it was an abuse of discretion to grant third Father's section 388 petition. (See *Casey D.*, *supra*, 70 Cal.App.4th at p. 48–49.)

DISPOSITION

The order granting Father's third section 388 petition is reversed; we remand with instructions for the juvenile court to proceed with the implementation of the permanent living plans for the dependent children.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.